

FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 435

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LEMBKE.

Read 1st time February 23, 2009, and ordered printed.

Read 2nd time February 25, 2009, and referred to the Committee on Financial and Governmental Organizations and Elections.

Reported from the Committee March 11, 2009, with recommendation that the bill do pass and be placed on the Consent Calendar.

Taken up March 26, 2009. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

2065L.01P

AN ACT

To repeal sections 630.110, 632.489, and 632.495, RSMo, and to enact in lieu thereof three new sections relating to sexually violent predators.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 630.110, 632.489, and 632.495, RSMo, are repealed

2 and three new sections enacted in lieu thereof, to be known as sections 630.110,
3 632.489, and 632.495, to read as follows:

630.110. 1. Except as provided in subsection 5 of this section, each person
2 admitted to a residential facility or day program and each person admitted on a
3 voluntary or involuntary basis to any mental health facility or mental health
4 program where people are civilly detained pursuant to chapter 632, RSMo, except
5 to the extent that the head of the residential facility or day program determines
6 that it is inconsistent with the person's therapeutic care, treatment, habilitation
7 or rehabilitation and the safety of other facility or program clients and public
8 safety, shall be entitled to the following:

9 (1) To wear his own clothes and to keep and use his own personal
10 possessions;

11 (2) To keep and be allowed to spend a reasonable sum of his own money
12 for canteen expenses and small purchases;

13 (3) To communicate by sealed mail or otherwise with persons including
14 agencies inside or outside the facility;

15 (4) To receive visitors of his own choosing at reasonable times;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 (5) To have reasonable access to a telephone both to make and receive
17 confidential calls;

18 (6) To have access to his mental and medical records;

19 (7) To have opportunities for physical exercise and outdoor recreation;

20 (8) To have reasonable, prompt access to current newspapers, magazines
21 and radio and television programming.

22 2. Any limitations imposed by the head of the residential facility or day
23 program or his designee on the exercise of the rights enumerated in subsection
24 1 of this section by a patient, resident or client and the reasons for such
25 limitations shall be documented in his clinical record.

26 3. Each patient, resident or client shall have an absolute right to receive
27 visits from his attorney, physician or clergyman, in private, at reasonable times.

28 4. Notwithstanding any limitations authorized under this section on the
29 right of communication, every patient, resident or client shall be entitled to
30 communicate by sealed mail with the department, his legal counsel and with the
31 court, if any, which has jurisdiction over the person.

32 5. Persons committed to a residential facility or day program operated,
33 funded or licensed by the department pursuant to section 552.040, RSMo,
34 **persons detained at a county jail or at a secure facility under section**
35 **632.484 or 632.489, RSMo, or persons committed to a secure facility**
36 **under section 632.495, RSMo**, shall not be entitled to the rights enumerated
37 in subdivisions (1), (3) and (5) of subsection 1 of this section unless the head of
38 the residential facility or day program determines that these rights are necessary
39 for the person's therapeutic care, treatment, habilitation or rehabilitation. In
40 exercising the discretion to grant any of the rights enumerated in subsection 1 of
41 this section to a patient, resident or client, the head of the residential facility or
42 day program shall consider the safety of the public.

632.489. 1. Upon filing a petition pursuant to section 632.484 or 632.486,
2 the judge shall determine whether probable cause exists to believe that the
3 person named in the petition is a sexually violent predator. If such probable
4 cause determination is made, the judge shall direct that person be taken into
5 custody and direct that the person be transferred to an appropriate secure
6 facility, including, but not limited to, a county jail. If the person is ordered to the
7 department of mental health, the director of the department of mental health
8 shall determine the appropriate secure facility to house the person under the
9 provisions of section 632.495.

10 2. Within seventy-two hours after a person is taken into custody pursuant
11 to subsection 1 of this section, excluding Saturdays, Sundays and legal holidays,
12 such person shall be provided with notice of, and an opportunity to appear in
13 person at, a hearing to contest probable cause as to whether the detained person
14 is a sexually violent predator. At this hearing the court shall:

15 (1) Verify the detainee's identity; and

16 (2) Determine whether probable cause exists to believe that the person is
17 a sexually violent predator. The state may rely upon the petition and supplement
18 the petition with additional documentary evidence or live testimony.

19 3. At the probable cause hearing as provided in subsection 2 of this
20 section, the detained person shall have the following rights in addition to the
21 rights previously specified:

22 (1) To be represented by counsel;

23 (2) To present evidence on such person's behalf;

24 (3) To cross-examine witnesses who testify against such person; and

25 (4) To view and copy all petitions and reports in the court file, including
26 the assessment of the multidisciplinary team.

27 4. If the probable cause determination is made, the court shall direct that
28 the person be transferred to an appropriate secure facility, including, but not
29 limited to, a county jail, for an evaluation as to whether the person is a sexually
30 violent predator. If the person is ordered to the department of mental health, the
31 director of the department of mental health shall determine the appropriate
32 secure facility, **which may include a county jail as set forth in section**
33 **632.495**, to house the person. The court shall direct the director of the
34 department of mental health to have the person examined by a psychiatrist or
35 psychologist as defined in section 632.005 who was not a member of the
36 multidisciplinary team that previously reviewed the person's records. In addition,
37 such person may be examined by a consenting psychiatrist or psychologist of the
38 person's choice at the person's own expense. Any examination shall be conducted
39 in the facility in which the person is confined. Any examinations ordered shall
40 be made at such time and under such conditions as the court deems proper;
41 except that, if the order directs the director of the department of mental health
42 to have the person examined, the director shall determine the time, place and
43 conditions under which the examination shall be conducted. The psychiatrist or
44 psychologist conducting such an examination shall be authorized to interview
45 family and associates of the person being examined, as well as victims and

46 witnesses of the person's offense or offenses, for use in the examination unless the
47 court for good cause orders otherwise. The psychiatrist or psychologist shall have
48 access to all materials provided to and considered by the multidisciplinary team
49 and to any police reports related to sexual offenses committed by the person being
50 examined. Any examination performed pursuant to this section shall be
51 completed and filed with the court within sixty days of the date the order is
52 received by the director or other evaluator unless the court for good cause orders
53 otherwise. One examination shall be provided at no charge by the department.
54 All costs of any subsequent evaluations shall be assessed to the party requesting
55 the evaluation.

632.495. 1. The court or jury shall determine whether, by clear and
2 convincing evidence, the person is a sexually violent predator. If such
3 determination that the person is a sexually violent predator is made by a jury,
4 such determination shall be by unanimous verdict of such jury. Any
5 determination as to whether a person is a sexually violent predator may be
6 appealed.

7 2. If the court or jury determines that the person is a sexually violent
8 predator, the person shall be committed to the custody of the director of the
9 department of mental health for control, care and treatment until such time as
10 the person's mental abnormality has so changed that the person is safe to be at
11 large. Such control, care and treatment shall be provided by the department of
12 mental health.

13 3. At all times, persons ordered to the department of mental health after
14 a determination by the court that such persons may meet the definition of a
15 sexually violent predator, persons ordered to the department of mental health
16 after a finding of probable cause under section 632.489, and persons committed
17 for control, care and treatment by the department of mental health pursuant to
18 sections 632.480 to 632.513 shall be kept in a secure facility designated by the
19 director of the department of mental health and such persons shall be segregated
20 at all times from any other patient under the supervision of the director of the
21 department of mental health. The department of mental health shall not place
22 or house a person ordered to the department of mental health after a
23 determination by the court that such person may meet the definition of a sexually
24 violent predator, a person ordered to the department of mental health after a
25 finding of probable cause under section 632.489, or a person committed for
26 control, care, and treatment by the department of mental health, pursuant to

27 sections 632.480 to 632.513, with other mental health patients. The provisions
28 of this subsection shall not apply to a person who has been conditionally released
29 under section 632.505.

30 4. The department of mental health is authorized to enter into an
31 interagency agreement with the department of corrections for the confinement of
32 such persons. Such persons who are in the confinement of the department of
33 corrections pursuant to an interagency agreement shall be housed and managed
34 separately from offenders in the custody of the department of corrections, and
35 except for occasional instances of supervised incidental contact, shall be
36 segregated from such offenders.

37 5. **The department of mental health is authorized to enter into a**
38 **contract agreement with one or more county jails in Missouri for the**
39 **confinement of persons ordered to the department of mental health**
40 **after a determination by the court that such persons may meet the**
41 **definition of a sexually violent predator or for the confinement of**
42 **persons ordered to the department of mental health after a finding of**
43 **probable cause under section 632.489. Such persons who are in the**
44 **confinement of a county jail pursuant to a contract agreement shall be**
45 **housed and managed separately from offenders in the custody of the**
46 **county jail, and except for occasional instances of supervised incidental**
47 **contact, shall be segregated from such offenders.**

48 6. If the court or jury is not satisfied by clear and convincing evidence
49 that the person is a sexually violent predator, the court shall direct the person's
50 release.

51 [6.] 7. Upon a mistrial, the court shall direct that the person be held at
52 an appropriate secure facility, including, but not limited to, a county jail, until
53 another trial is conducted. If the person is ordered to the department of mental
54 health, the director of the department of mental health shall determine the
55 appropriate secure facility to house the person. Any subsequent trial following
56 a mistrial shall be held within ninety days of the previous trial, unless such
57 subsequent trial is continued as provided in section 632.492.

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